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ABSTRACT

This paper is intended to assist state and local education agencies in their efforts to provide appropriate educational services to students with disabilities in a manner consistent with Section 504 of the Rehabilitation Act of 1973 and its accompanying regulations. The paper deals directly with Subpart D of Section 504, concerning preschool, elementary, and secondary education. Organization of the U.S. Office for Civil Rights (OCR) and its role in education policy are discussed. OCR's activities in four areas are noted, including technical assistance, investigation and resolution of complaints, compliance reviews, and data collection. Several important themes embodied in the Section 504 statute and regulations are examined, such as equal treatment, defining "appropriate education," and defining "handicapped person." Similarities and differences between Section 504 and the Individuals with Disabilities Education Act are addressed. Specific suggestions are offered to assist public schools in formulating procedures that may help in complying with Section 504 and in dealing with the OCR. Federal regulations for Subpart D of Section 504 are reprinted, and the forms used by school systems and individual schools in the Elementary and Secondary School Civil Rights Survey are provided. (JDD)

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Section 504 of the Rehabilitation Act of 1973; Old Problems and Emerging Issues for Public Schools

The Statutory provision which established the authority for the Federal government to act to prohibit discrimination on the basis of handicap by recipients of Federal funds is found at 20 U.S.C. 794 (The Rehabilitation Act of 1973):

> *"No otherwise qualified individual with a handicap in the United States, as defined in section 706(6) of this Title, shall, solely on the basis of his or her handicap, be denied participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate regulations as may be necessary to carry out the amendments made to this section of the Comprehensive Rehabilitation and Developmental Disabilities Act of 1978....."*

How the Federal Government Administers Section 504

This paper is intended to assist state and local education agencies in their efforts to provide appropriate educational services to students with handicaps in a manner consistent with Section 504 of the Rehabilitation Act of 1973 and its accompanying regulations.

Section 504 and the Individuals with Disabilities Education Act (IDEA) have many similarities and a few significant differences which can have broad implications for state and local education agencies. This paper addresses these areas and ends by providing recommendations for public schools, presents the 504 Regulations and a copy of the Survey Forms OCR uses in its biannual data collection.

This description of OCR structure and activities is provided so that agencies can better understand OCR and its operations. In this way, interactions can be based on a clear understanding of the office's authority and the vehicles for discharging responsibility.

The regulations promulgated to carry out the statute are found at 34 CFR Part 104, titled "Nondiscrimination on the basis of Handicap." The regulations contain six subparts:

Subpart A. General Provisions
Subpart B. Employment Practices
Subpart C. Program Accessibility
Subpart D. Preschool, Elementary, and Secondary Education
Subpart E. Postsecondary Education
Subpart F. Health, Welfare, and Social Services

The subparts are administered in two different Departments; the department of Health and Human Services and the Department of Education. In general, the department which flows funds to a recipient has oversight responsibility on particular matters.

In most cases, Section 504 issues concerning educational agencies would be handled by the Department of Education. This includes the investigation of employment practices, complaints against local school districts, as well as complaints concerning the provision of educational services to students with handicaps. Readers should be mindful of the breadth of issues covered by Section 504 and the potential involvement of either Department in state or local education agency operations. The focus of this paper is limited to Section 504 as it relates to the provision of education services to students with handicaps rather than the many other issues which are addressed by the law and regulations. This paper deals directly with *Subpart D:* Preschool, Elementary, and Secondary Education.

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Organization of the Office for Civil Rights

Responsibility for the administration of Section 504 is assigned to the Assistant Secretary of the Office for Civil Rights, Department of Education, in Washington, D.C.

The Office for Civil Rights has components within each of the 10 Regional Offices of the Department of Education with approximately 600 staff. OCR employs approximately 200 staff in the D.C. Office of The Department of Education. The Regional and D.C. Offices administer all of the civil rights programs (Section 504; Title VI of the Civil Rights Act of 1964, Nondiscrimination on the Basis of Race, Color, or National Origin; Age Discrimination Act of 1975; Nondiscrimination on the basis of Age; and Title IX of the Education Amendments of 1972, Nondiscrimination on the Basis of Sex).

REGIONAL OFFICE	PHONE NO.	STATES IN REGION
Boston	617/223-9662	MA, CT, RI , NH, ME, VT
New York	212/264-5180	NY, NJ, PR, VI
Philadelphia	215/596-6772	DE, DC, MD, VA, WV, PA
Atlanta	404/331-2954	GA, NC, SC, FL, TN, KY, MS, AL
Chicago	312/886-3456	IL, OH, MN, MI, IN, WI
Dallas	214/767-3959	TX, AR, OK, LA, NM
Kansas City	816/891-8026	KS, NE, MO, IA
Denver	303/844-5695	CO, MT, ND, SD, UT, WY
San Francisco	415/556-7060	AZ, CA, NV, Am. Samoa, GUAM, HI
Seattle	206/442-6811	AK, WA, OR, ID

A complaint against a school district in any state would be investigated by the appropriate Regional Office which is assigned to that state.

The Regional Offices plan and conduct activities on the basis of the needs, trends, and issues within the particular Region represented. All matters regarding investigations of complaints, technical assistance, and compliance reviews are handled by the Regional Offices or through the Regional Offices to the D.C. Office. Overall planning, coordination, and policy setting resides in the D.C. Office which has its own attorneys and staff with expertise in civil rights law and policy.

Will OCR's Role in Education Policy Increase in the 90's?

Policy for Section 504 is established in the statute and regulation and is also developed through the application of the regulation and court decisions to new cases and issues. All matters which have potential implications for clarifying interpretations of Section 504 normally require the direct involvement of the D.C. Office's Policy Division, Elementary and Secondary Branch. This unit coordinates policy development and assists the Regional Offices as they apply existing policy to the increasingly varied and complex issues with which OCR is involved.

As the population of students in school who are possibly "covered" as handicapped by Section 504 increases and as the courts, advocacy organizations, and the schools demand more clarity and more activity on the part of OCR, the role of the Policy Division and OCR leadership will increase in the 90's.

OCR conducts four major types of activities to prevent discrimination on the basis of handicap:

- **Technical Assistance:** Technical assistance is carried out directly by staff in the form of guidance to recipients and through contracts to produce materials and information for interested recipients and other audiences.

- **Investigation and Resolution of Complaints:** Investigation and resolution of Section 504 complaints filed by individuals or organizations against specific recipients of federal funds is the major function of OCR.

- **Compliance Reviews:** Each Regional Office annually conducts compliance reviews in selected school districts to identify potential problems and improve district compliance at the local level,

- **Data Collection:** OCR collects large amounts of data and information from state and local education agencies through "101 and 102" surveys concerning the status of services for and placements of handicapped and minority students.

Technical assistance is available to any recipient upon request. However, the investigation and resolution of complaints constitutes the majority of OCR's work. And, Section 504 complaints account for the bulk of all civil rights complaints investigated. The majority of complaints are investigated and resolved at the Regional Office level. These complaints generally result in two types of letters: Non Violation letters, and Violations with Negotiated Agreement.

In some cases, when a resolution cannot be achieved through negotiation, a Letter of Findings (LOF) is written which formally notifies the affected agency of noncompliance with Section 504. Such LOFs are reviewed by DC headquarters staff prior to issuance.

When an LOF is issued, there is still an opportunity for the agency to seek a negotiated remedy through voluntary compliance. If it is determined that the

Complaints to OCR on the Rise

During the period January 1, 1990 to December 31 1990 1, 538 Section 504 complaints were filed with OCR. The number was an increase from the previous year of 289. By contrast, during 1990 a total of 452 Title IX and Title IX complaints were filed. A summary of the disposition of the complaints filed during 1990 follows.

Section 504 Complaints filed

	1989	1990
Total Field	1,247	1,538
Investigated with LOFs	631	713
LOFs with uncorrected viol.		21
LOFs with no violations		297
LOFs with corrected violations		395

Types of Complaints
October 1 - September 30, 1990

Type of Issue	Number of Complaints	% Complaints Received
Placement	374	21
Eval/classific.	288	16
Educ. settings	264	15
Aids/services	229	13
Proc/due process	165	9

The Education of the Handicapped Law Report (EHLR) publishes OCR LOFs, letters clarifying existing policy, and Memoranda issued by the Office concerning administration and procedures for applying law and regulations to various circumstances. A review of these should be valuable in understanding OCR, especially prior to or during an OCR investigation or while negotiating with the Office.

These Memoranda sometimes explain limits on OCR's investigatory authority and policy making. Familiarity with such information can help to ensure that OCR conducts its activities within its authority. School districts and other agencies have sometimes entered into agreements which would not withstand policy scrutiny by the DC central office.

agency will not voluntarily comply, a notice of opportunity for a hearing is issued prior to the imposition of sanctions.

The hearing is presided over by an Administrative Law Judge who issues a decision and may order the termination of funds or other sanctions. The decision of such a hearing can be appealed to the Department's Reviewing Authority; and then to the Secretary of Education.

Compliance reviews are actions initiated by OCR in which agencies are monitoring agencies for compliance with Section 504 where there are indications of problems. The reviews provide a comprehensive look at agency performance across a wide variety of areas. OCR also uses the reviews to stay abreast of potential policy adjustments which may be needed and where technical assistance strategies might be developed to address emerging problems.

School districts and other agencies are usually selected for a review on the basis of a combination of factors. A district might be selected because it is the largest in a rural state and OCR determined that it could affect a large number of students while expending a relatively small amounts of resources.

Other reviews might be issue specific and encompass an entire state; for example, a Regional Office may determine that access to programs for physical education is a problem throughout a state. In this instance, it may select several school districts and the state education agency to conduct a review of the state's policies and the districts' practices.

When this occurs, OCR might require corrective actions from all or some of the agencies reviewed. Sources for selecting issues or agencies to be the subject of a compliance review include the national surveys (101 and 102), previous compliance history, and numbers of complaints against certain agencies or about certain issues. Each Regional Office develops its own annual compliance review schedule which becomes part of OCR's annual Operational Plan and is published in the Federal Register.

It is important for agencies, which are the subject of a proposed compliance review, to understand the reason for being selected for review in order to adequately prepare for the review and to understand specific issues to be addressed in the review. If selected for a compliance review, school administrators need to communicate with OCR to establish the basis on which OCR will base its decisions. It is possible that OCR could rely on data which is not consistent with the agency's data.

With regard to data collection, OCR collects substantial information for purposes of monitoring the status of compliance with Section 504 and to develop technical assistance activities. These data are collected from school districts at the individual school building and facility level. The data collection occurs every two years and is commonly referred to as the "101 and 102" after page 8.

The completed forms are often provided to OCR directly by personnel in local school districts and/or buildings without any review by state education agency officials, and often is different data than is collected or known to special education staff at the local/state level.

This results in a lack of consistency between data submitted to OCR and special education data. Consequently, often the activities undertaken by OCR appear to be unrelated to the actual situation at least as it is known by the special education community. For example, OCR uses a different formula than the Office of Special Education Programs (OSEP) in the Department of Education to calculate the percentage of time students spend in various special placements. Thus, OCR could schedule a compliance review based on placement data entirely different from local/state education agency or OSEP data.

Section 504 is a Civil Rights Act

Section 504 is a Civil Rights Act. It prohibits recipients of federal funds from discriminating against "otherwise qualified individuals."

Though this paper deals with the effect of Section 504 on recipients as providers of educational services to school age students, such recipients must be mindful that all of the other relevant provisions of Section 504 apply to educational service providers as well. For example, a meeting conducted to develop an Individualized Education Program for a student suspected of being learning disabled might have to be provided in a facility with special accommodations for physically disabled individuals if one of the participants is non-ambulatory. Although not required under IDEA-B, it is part of the program accessibility standards of Section 504. Therefore, Section 504 has implications for educators that go beyond educational service delivery.

Several important themes are embodied in the Section 504 statute and regulations.

Equal Treatment. Nondiscrimination under 504 means equal treatment as in other civil rights contexts. However, equal treatment does not mean the "same treatment" as it is usually construed under traditional civil rights applications.

Protection against improper treatment or discrimination in the educational context requires a rigorous application of procedural safeguards to avoid arbitrary and/or capricious determinations. For example, providing the same educational evaluation to a student who is handicapped as is provided to a student who is not handicapped is not usually sufficient to meet the equal treatment theme. Similarly, changes in an educational program of a handicapped student might require additional procedures and review.

This notion of a "heightened standard" for how educational determinations are made about a student with a handicap has continuously perplexed educators who often perceive "equal treatment" as the "same treatment." This may explain why school discipline issues have been so volatile.

The question is continuously raised: "Why are handicapped students not subject to the same discipline standards as nonhandicapped students?" The Section 504 answer is clear. The same disciplinary standards might be applicable, but that determination is subject to an application of specific procedural safeguards.

Appropriate Education. The language of the Section 504 regulations defining "appropriate education" (34CFR 104.33(b)(1)) states:

> *(1) For the purposes of this subpart, provision of an appropriate education is the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met and (ii) are based upon adherence to procedures that satisfy the requirements of Secs. 104.34, 104.35, and 104.36.*

This definition includes two standards: (1) the individual educational needs must be addressed in a way that is reasonably calculated to result in a program of services that will meet specific educational needs; and (2) all procedural requirements must be met.

The first standard of the appropriate education definition requires a "test" of how well the educational needs are met and is called a comparability test. The needs of students with handicaps must be met as well as other students' needs are met. The Supreme Court described this test by requiring that the educational program be designed in such a way that it is reasonably calculated that the person will "derive some benefit." (*Rowley v. Hendrick Hudson Board of Education*).

As a nondiscrimination policy, Section 504 inherently requires some standard of comparison to determine if discriminatory behavior exists. The dilemma is that very few agencies have decided what the standard for appropriate education is for all students. Meaningful application of Section 504 in the educational context requires a clear understanding of what the agency considers to be appropriate education for all students prior to the development of a complaint or case against the district for discrimination.

If the standard for appropriate education is clear, the application of Section 504 becomes relevant, less threatening, and more manageable.

The second standard of the appropriate education definition is required adherence to the procedural requirements in the regulations which include the following major components:

- Academic Setting, 34 CFR 104.34 (similar to the least restrictive requirements of IDEA-B);
- Evaluation and Placement, 34 CFR 104.35 (language identical in several areas to the IDEA-B requirements); and

- Procedural Safeguards, 34 CFR 104.36 (Consistent with IDEA-B but not as comprehensive and specific).

These three procedural requirements are designed to avoid arbitrary decisions made by educational agencies which would result in denial of access, unnecessary segregation, lesser quality program, and excessive costs to parents for services. These procedural requirements are applied by OCR to determine whether an agency under review has taken appropriate steps to ensure the provision of required educational or related aids and services.

The perplexing question is: What is the procedural obligation of an educational agency when a Section 504 qualified handicapped person is receiving an educational program which meets the person's individual educational needs as adequately as those of that person's nonhandicapped peers?

This summons the earlier question of "What constitutes meeting the educational needs of nonhandicapped persons?" It has become a major issue as more and more populations of students seem to be emerging as handicapped under Section 504, but who might not be eligible for special education under IDEA — such as chemically dependent youngsters, children born to drug-addicted mothers, children with Acquired Immune Deficiency Syndrome (AIDS), socially maladjusted persons, persons needing medication to attend school in the absence of other educational or related needs, and persons with attention deficit disorders.

To what lengths must agencies go to make determinations concerning appropriate educational programs for these handicapped persons? The answer to this question is vague. However, it is clear that:

(1) all assessment procedures should be followed so that the agency can demonstrate that it has gathered the necessary information to make a reasonable determination regarding what does or does not need to be done. The evaluation should be sufficient to make a decision about the presenting problem. If it is a problem that the student appears to need medication to be administered in order to attend a full school day and all other factors appear to be appropriate, then the evaluation might only include a medical examination with a review of the student's academic progress and program. If the problem is compounded by the fact that the student also needs some reading accommodation because the medication effects vision for about two hours after administration, a vision and academic performance examination might be necessary.

(2) The "placement determination" requirements apply even when the student is determined to be handicapped under Section 504, but not in need of special education. In this case, the agency must determine whether the person is receiving an appropriate education, and if not, make arrangements to ensure that the person does.

Handicapped Person. Perhaps the most interesting and significant concept in Section 504 is the definition of "handicapped persons" found in 34 CFR 104.3 which states: *Subpart A.* General Provisions "handicapped person means any person who (i) has a physical or mental impairment which substantially limits one or more major life activities (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment."

It is important to note the broad potential coverage of this definition in the educational setting. The definition encompasses a larger group of persons than persons eligible for special education under IDEA. Agencies must take great care to not treat "qualified handicapped persons" in any discriminatory way, even if the person is not regarded as handicapped under IDEA.

Many educational agencies are not familiar with this definition which contemplated handicapped persons who were not in need of special education but who continue to require protection under Section 504. In order to differentiate such persons from those who are eligible for special education, each agency must know what constitutes appropriate education for all its students.

Another related factor of the definition of handicapped persons under Section 504 is the requirement for providing regular education and/or related services and aids even when special education is not needed. For example, a student might be in special education classes for forty five minutes a day, but while in the regular class, the student might need the agency to administer medication which is not related to the special education program.

In this case, the student qualifies for services under both programs. However, the related service might have nothing to do with the special education service being provided. It is also quite common for the agency to make modifications in the instructional environment or materials such as rearrangement of seating assignments, adaptation of materials, or the use of specialized hearing or reading devices.

Summary. These major themes of a "heightened standard for equal treatment", appropriate education as "the provision of regular or special education and related aids and services", and a definition of "handicapped persons as being potentially any person" create a comprehensive and pervasive body of law and policy which is increasingly affecting regular and special education leaders and service providers.

Differences Between IDEA and Section 504

The substantive differences between IDEA-B and Section 504 are generally those which deal with the major themes described above:

Definition of Appropriate Education. The IDEA-B definition is:

> *" ....special education and related services which:*
>
> *(a) Are provided at public expense, under public supervision and direction, and without charge;*
>
> *(b) Meet the standards of the State educational agency including the requirements of this part;*
>
> *(c) Includes preschool, elementary school, or secondary school education in the State involved; and*
>
> *(d) are provided in conformity with an Individualized Educational Program which meets the requirements under 300.300 - 349 of Section C." (34 C.F.R. 300.349)*

The significant difference between this definition and the Section 504 definition is that under IDEA-B, special education and related services provided through an IEP is appropriate education. Section 504 recognizes that appropriate education might be provided through the provision of regular education or related aids and services *without an IEP*. Also, under IDEA-B related services may not be provided without special education. Section 504 may require the provision of related services to a student not eligible for special education.

It is clear here that Section 504 recognizes two very important possibilities:

> *(1) There is a population of handicapped persons who are not eligible for special education under IDEA-B who are still in need of protection against discrimination because of a handicap as defined under Section 504; and*
>
> *(2) There is an obligation imposed on recipients to provide services (evaluations, regular education, reasonable accommodations, related services and related aids) regardless of eligibility for special education under IDEA-B.*

The full impact of these possibilities is just now being recognized, mainly because of: (1) the recent heavy interest of OCR and OSEP in implementing Least Restrictive Environment (LRE) requirements, (2) the volatile issue of students with AIDS having access to educational opportunity, and (3) increasing numbers of "at risk" students and other Section 504 qualified handicapped students.

These have resulted in OCR attempts to apply existing regulations to difficult new situations. In turn, it has resulted in an increasing number of challenges by educational agencies to OCR actions, including challenges to OCR authority to enforce *Subpart D* in educational agencies.

Eligibility for Special Education. A second difference concerns "eligibility for special education" under IDEA as compared to "protected" under Section 504. IDEA-B, and most special education policies in states require the existence of a handicapping condition identified in IDEA-B regulations (34 CFR Part 300, Section 300.5), which adversely affects educational performance necessitating special education services. Section 504's broader definition includes persons with handicaps not mentioned in IDEA or state education policies. *Therefore, the obligation of school districts to provide appropriate education may extend beyond the traditionally operated special education programs.*

There are at least three conclusions that can be made that relate to the differences in eligibility policies between Section 504 and IDEA-B (and corresponding SEA policies):

1. **There are many more individuals who can be the subject of a Section 504 dispute than an IDEA-B dispute.** For example, youngsters with AIDS or orthopedic impairments might be protected under 504 but not be educationally handicapped under IDEA-B.

2. **The provision or availability of a special education system of services does not always suffice to meet the Section 504 requirements.** A district can claim that any child with a handicap would be provided FAPE through its special education program and still not be in compliance with Section 504.

3. **A district might be required to provide related services or other aid under Section 504 in the absence of any provision of special education.** A district might be compelled to use "regular education" monies to support the related services costs of a handicapped youngster.

The solution for coordinating, interpreting and enforcing IDEA-B, Section 504, and state requirements has eluded federal, state, and local agencies since 1975. Although OSEP, which has responsibility for the administration of IDEA-B, and OCR have entered into two different agreements to coordinate their activities, most observers, including the Supreme Court in *Smith v. Robinson*, 1984, do not believe that these efforts have been particularly effective.

State and local education agencies have often been victims of the lack of federal coordination. For example, it is possible for the same issue to be simultaneously the subject of an OCR investigation under 504, a federal court case under 504, an administrative hearing under IDEA-B, and a state investigation under state law or regulations.

When OSEP receives a complaint which alleges a violation of Section 504 which is also a violation of IDEA-B, it refers the complaint at the same time to OCR and the state education agency for investigation. Thus, the Department of Education creates a dual in-

vestigation. OCR has recognized this dilemma and responds by halting investigations of cases that are in the administrative hearing or appeal process. However, it is possible for a complaint to be investigated by two or three different agencies.

Summary. These three differences of substance and administration can lead to the inefficient expenditure of federal, state and local resources in efforts to sort out issues after the fact. Agencies should be aware of these jurisdictional and substantive differences so that they can act accordingly.

Suggestions for Public School Educators

Despite the fact that Section 504 has been national public policy since 1975, its full implications regarding education are just now emerging. Because IDEA-B and Section 504 are so superficially similar that they appear to be the same, it requires careful study to really see the important differences.

Regular educators in particular must take the time to understand Section 504 and their responsibilities. Special educators must consider the application of their expertise gained from administering IDEA-B to cope with the new emergence of Section 504 issues.

Following, are specific suggestions which are intended to assist agencies in formulating procedures which may help in complying with Section 504 and in developing appropriate and meaningful approaches in dealing with OCR.

1. Always make certain that the basis for OCR's interest in the agency is absolutely clear. It is appropriate to insist on a written explanation of the regulatory authority for OCR's proposed activities.

2. Request that OCR specify and describe in regulatory terms the specific issues it is looking into and get it established that OCR's activities will be limited to those issues. Otherwise, a simple complaint investigation could turn into a overall compliance review visit.

3. Prior to appropriate OCR activity, request a copy of the investigative procedures to be used by OCR to conduct the proposed activity and the process for collecting and analyzing data as well as the methods used to communicate findings and resolve disputes.

4. Always formally ask for technical assistance before a problem is suspected or immediately upon identification of problem.

5. Attempt to resolve disputes. OCR has a good track record of negotiating resolution of findings. BUT, make certain that the agreed upon remedy is in fact required and/or desirable. It is important to know the law and regulations and to make certain that the remedy is in the interest of the students affected and the agency.

6. Determine if the issues being dealt with are matters of well established case law or if they are new applications of Section 504. If they are new, be mindful that there is an interest on the part of OCR to establish sound and workable policy. Negotiations and agreements should be entered with the realization that the remedy might have a significant impact well beyond the specific agency.

7. Understand how OCR is organized and be clear if an activity is being handled at the Regional Office level solely, or is also being considered at the central office in Washington, DC. Issues requiring action or review on the part of the central office imply greater significance. If there is central office participation in the process, it may be appropriate to involve organizations representing agency interests such as the American Association of School Administrators, National Association of State Directors of Special Education, Inc., Counsel of Administrators of Special Education, Inc., etc., because of the potential broad implications for setting national policy by OCR.

8. Become familiar with Section 504 and IDEA-B, especially in the following areas:

Equal Treatment — Section 504 requires that persons with handicaps be protected in the educational decision making process through adherence to procedures which are different from those afforded persons without handicaps. Keep in mind the standard established in discipline cases which requires the application of procedural safeguards when making decisions regarding a student's behavior when the student has even just a Section 504 handicap.

Appropriate Education — Be certain that the student is being afforded appropriate education which can involve regular or special education, or related aids and services. Establish a clear standard for what constitutes meaningful educational benefit for any student receiving educational services from the agency. Also, remember that denial of access to any program operated by the agency (including extracurricular and nonacademic activities) of an "otherwise qualified" person with a handicap is prohibited, and the agency might be required to make reasonable accommodations to ensure access (e.g., adaptive devices, distribution of medication, removal of physical barriers).

Handicapped Person — Persons with handicaps under Section 504 comprise a larger percentage of the population than those eligible under the IDEA special education requirements. Remember that determination of the handicap under Section 504 requires an adequate information collection and appropriate evaluation process.

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Sample Definitions for Public Schools

Appropriate Education: The term "appropriate education" means :

(1) for a student who has never been enrolled in a public or private elementary school, performance at or not substantially below expected developmental levels for a student of the same age;

(2) for a student who is currently enrolled in a public or private elementary or secondary school but not receiving special education and related services or is a high school dropout, performance at or not substantially below expected competencies (or other educational standards including progress through a curriculum or promotion from grade to grade) established for grade and/or age level;

(3) for a student who is currently receiving special education and related services, substantial progress toward the attainment of the goals in the IEP, as evidenced by the accomplishment of at least a majority of the short-term instructional objectives established in each goal area.

Eligible Student: An eligible student is a person of age three through twenty-one who:

(1) has a physical or mental impairment, as set forth in the EHA-B regulations; and

(2) does not achieve education satisfactorily due to a significant physical or mental impairment; and

(3) because of (1) and (2) above needs special education.

Qualified Handicapped Student: A qualified handicapped student is a school age student who:

(1) has a physical or mental impairment which significantly limits participation in one or more major life activities;

(2) does not achieve education satisfactorily due to a significant physical or mental impairment which significantly limits participation in one or more of major life activities; and

(3) requires the provision of a multidisciplinary evaluation, a supplementary service or aid, a related service, or some other reasonable accommodation to receive an appropriate education.

OCR Forms 101 and 102 follow ...

This report is required by the U.S. Department of Education pursuant to Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, and under Section 504 of the Rehabilitation Act of 1973. Section 100.6(b) of ED Regulations (34CFR 100), issued to carry out the purposes of Title VI of the Civil Rights Act of 1964, provides:

Compliance Reports. Each recipient shall keep such records and submit to the responsible Department official or his designee timely, complete and accurate compliance reports at such times, and in such form, and containing such information, as the responsible Department official or his designee may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this regulation.

OMB No. 1870-0500
Expiration 9/89

Fall 1988
Elementary and Secondary School Civil Rights Survey
SCHOOL SYSTEM SUMMARY REPORT: ED101
Office for Civil Rights
U.S. Department of Education
Washington, DC 20202-2516
Due December 15, 1988

GENERAL INSTRUCTIONS

- Please use a typewriter or print legibly in ink.
- Pupil membership should be reported as of October 1, 1988, or the nearest convenient date prior to December 15, 1988.
- If the answer for a given item is "none", enter "0" in the appropriate space.
- If a particular item is not applicable in your case, enter "N/A"
- Copies of this ED101 form and all ED102 forms for the district must be retained in the district office for two years from the due date (until December 15, 1990).

DEFINITION

SCHOOL For the purpose of this report, a school is a division of the school system consisting of elementary and/or secondary (or equivalent) students, comprising one or more grade groups or other identifiable groups, organized as one unit with one or more teachers to give instruction of a defined type, and housed in a school plant of one or more buildings. More than one school may be housed in one school plant, as is the case when the elementary and secondary schools are housed in the same plant. Count only units administered by a principal or equivalent.

INSTRUCTIONS FOR COMPLETING FORM ED101

Questions 1, 2, 3. Self-explanatory.

Question 4. COURT ORDER STATUS. If you are uncertain as to whether or not your school is currently subject to a Federal or State court order requiring your system to develop or implement a plan for desegregation, you should contact the Clerk of the appropriate Federal or State court to obtain this information.

Question 5. SPECIAL EDUCATION. For the purposes of this survey, a special education pupil is (a) a student whose residence is within the geographic area served by the school system, (b) who is within the age group served by the school system, and (c) who has one or more of the following handicapping conditions: educable mental retardation; trainable mental retardation; hearing impairment; visual impairment; speech impairment; orthopedic impairment; other health impairments such as limited strength, vitality or alertness due to a heart condition, tuberculosis, rheumatic fever, etc.; serious emotional disturbance and/or a specific learning disability. Exclude children who are socially maladjusted or gifted/talented. Report on the basis of what is known to the school system at the time of reporting. Do not include children who are residents of other school districts, even if they are being served by your district.

a. How many children are awaiting initial evaluation? Number of pupils who have been referred for evaluation (to determine if they require special education) for the *first* time and who have not yet been evaluated. This number is exclusive of those reported in b. below; it does not include children being re-evaluated.

b. How many children have been identified as needing special education services? Number of children who have been evaluated as needing any type of special education program, either full-time or part-time.

c. How many children are placed in special education programs *in this district*? Include only those children who were identified in b. above. Combine the children being served on full-time and part-time bases. Include all children in the district who are presently enrolled in special education, whether they were evaluated in the past or for the first time this school year.

d. How many children are placed in special education programs in a nondistrict facility? Number of children evaluated as requiring special education and receiving special education services in a facility not operated by this school system. Combine children being served on a full-time and part-time bases.

CERTIFICATION After you have reviewed the data submitted on the ED101 form and on the ED102 forms to be attached for each school, please sign the certification and enter the telephone number to be used in the event that questions arise regarding this report.

BEST COPY AVAILABLE

Fall 1988 Elementary and Secondary School Civil Rights Survey
SCHOOL SYSTEM SUMMARY REPORT: ED101

Due December 15, 1988

Form Approved:
OMB No. 1870-0500
Expiration 9/89

SPACE FOR LABEL

1. NAME OF SCHOOL SYSTEM _____

2. ADDRESS _____
Street or P.O. Box

_____
County

_____
City/Post Office State Zip

3. SCHOOLS Total number of schools in this system. For each school, attach a completed Form ED102 .....

4. COURT ORDER STATUS Is this school system currently subject to a Federal or State court order requiring it to develop or implement a plan for pupil desegregation? .....

	Yes		No
	Fed	State	
	☐	☐	☐

5. SPECIAL EDUCATION Please refer to the instruction sheet.

a. How many children are awaiting initial evaluation? .....

b. How many children have been identified as requiring special education? .....

c. How many children are receiving special education in this district? .....

d. How many children are receiving special education in a nondistrict facility? .....

CERTIFICATION I certify that the information given on this form and on the attached ED102 forms is true and correct to my knowledge and belief. (A willfully false statement is punishable by law [U.S. Code, Title 18, Section 1001].)

Signature of Superintendent or Authorized Agent | Title | (Area Code) Telephone No | Date Signed

Form ED101

ORIGINAL—Return to Office for Civil Rights (LEGAL)

REPORTING REQUIREMENT

This report is required by the U.S. Department of Education pursuant to Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, and Section 504 of the Rehabilitation Act of 1973. Section 100.6(b) of ED Regulations (34 CFR 100) issued thereunder, and the purposes of Title VI of the Civil Rights Act of 1964, provides:

Compliance Reports. Each recipient shall keep such records and submit to the responsible Department official or his designee as may be determined to be necessary to enable him to ascertain whether the recipient has complied or is complying with this regulation.

Form Approved
OMB No. 1870-0500
Expiration 9/89

Fall 1988
Elementary and Secondary School Civil Rights Survey

INDIVIDUAL SCHOOL REPORT ED102

Office for Civil Rights
U.S. Department of Education
Washington, DC 20202-2516

Due December 15, 1988

GENERAL INSTRUCTIONS

- This form is to be completed for each individual school in the district.
- Please use a typewriter or print legibly in ink.
- Pupil membership should be reported as of October 1, 1988, or the nearest convenient date prior to December 15, 1988.
- If the answer for a given item is "none" or if all elements of a matrix are "0," enter "0" in the appropriate space or in the total column only (in the case of a matrix). If an item is not applicable, enter "N/A" (not applicable) in the appropriate space or in the total column only (in the case of a matrix).
- A copy of this form must be retained at the district office for two years from due date (until December 15, 1990).

DEFINITIONS

SCHOOL. For the purpose of this report, a school is a division of the school system consisting of elementary and/or secondary (or equivalent) students, comprising one or more grade groups or other identifiable groups, organized as one unit with one or more teachers to give instruction of a defined type, and housed in a school plant of one or more buildings. More than one school may be housed in one school plant, as is the case when the elementary and secondary schools are housed in the same plant. Count only units administered by a principal or equivalent.

RACIAL/ETHNIC CATEGORIES. Racial/ethnic designations as used by the U.S. Department of Education, Office for Civil Rights, do NOT denote scientific definitions of anthropological origins. *For the purposes of this report, a pupil may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging to. However, no person should be counted in more than one racial/ethnic category.* The manner of collecting the racial/ethnic information is left to the discretion of the institution provided that the system which is established results in reasonably accurate data.

- American Indian or Alaskan Native. A person having origins in any of the original peoples of North America and who maintains cultural identification through tribal affiliation or community recognition.
- Asian or Pacific Islander. A person having origins in any of the original peoples of the Far East, Southeast Asia, the Pacific Islands, or the Indian subcontinent. This area includes, for example, China, India, Japan, Korea, the Philippine Islands, and Samoa.
- Hispanic. A person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin—regardless of race.
- Black (Not of Hispanic Origin). A person having origins in any of the Black racial groups of Africa.
- White (Not of Hispanic Origin). A person having origins in any of the original peoples of Europe, North Africa, or the Middle East.

PROGRAMS FOR THE GIFTED OR TALENTED. Those programs designed for pupils who by virtue of outstanding abilities are capable of high performance and who require differentiated educational programs and/or services beyond those normally provided by the regular school program. Such pupils include those with demonstrated achievement and/or potential ability in any of the following areas singly or in combination: 1) general intellectual ability, 2) specific academic aptitude, 3) creative or productive thinking, 4) leadership ability, 5) visual or performing arts, 6) psychomotor abilities.

HANDICAPPED PUPILS (STUDENTS, CHILDREN) and SPECIAL EDUCATION PUPILS. For purposes of this report the terms are synonymous. A handicapped pupil is one with one or more of the handicapping conditions defined below and who has been evaluated as requiring special educational services because of (these) condition(s).

HANDICAPPING CONDITIONS. The following definitions are to be used in preparing this report:

- Educable mentally retarded (or handicapped)—a condition of mental retardation which includes pupils who are educable in the academic [illegible] areas even though moderate supervision may be necessary.
- Trainable mentally retarded (or handicapped)—a condition of mental retardation which includes pupils who are capable of only very limited [illegible] in the traditional basic academic skills but who are capable of profiting from programs of training in self-care and simple job or vocational [illegible].
- Hard of hearing—a hearing impairment, whether permanent or fluctuating, which adversely affects a child's educational performance but which [illegible] under the definition of "deaf" in this section.
- Deaf—a hearing impairment which is so severe that the child is impaired in processing linguistic information through hearing, with or without [illegible] adversely affects educational performance.
- Speech impaired—a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, which [illegible] child's educational performance.
- Visually handicapped—a visual impairment which, even with correction, adversely affects a child's educational performance. The term [illegible] and blind children.
- Seriously emotionally disturbed—a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree, which adversely affects educational performance: an inability to learn which cannot be explained by intellectual, sensory, or health factors; an inability to [illegible] satisfactory interpersonal relationships with peers and teachers; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or depression; or a tendency to develop physical symptoms or fears associated with personal or school problems. The term includes children who are schizophrenic.
- Orthopedically impaired—a severe orthopedic impairment which adversely affects a child's educational performance. The term includes impairments [illegible] congenital anomaly (e.g., clubfoot, absence of some member, etc.), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns which cause contractures).

BEST COPY AVAILABLE

Fall 1988 Elementary and Secondary School Civil Rights Survey
INDIVIDUAL SCHOOL REPORT: ED102
Due December 15, 1988

Form Approved:
OMB No. 1870-0500
Expiration 9/89

SECTION I—TO BE COMPLETED BY ALL SCHOOLS

1. **SCHOOL SYSTEM NAME** _____

2. **SCHOOL NAME** _____

3. **SCHOOL ADDRESS** _____
Street or P.O. Box

_____ _____ _____ _____
City, Post Office | County | State | Zip

SPACE FOR LABEL

4. GRADES OFFERED

- If this school is *totally ungraded*, check here ☐
- If this school offers *only* special education, check here ☐
- If this school is *partially* or *totally graded*, check the grades offered in the boxes below

☐ Pre-K ☐ K ☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☐ 7 ☐ 8 ☐ 9 ☐ 10 ☐ 11 ☐ 12

5. PUPIL STATISTICS Before you begin, please review the definitions and instructions on the instruction sheet of this form.

Columns 1 through 5 must equal column 6

Columns 7 and 8 must equal column 6

	1	2	3	4	5	6	7	8
	AMERICAN INDIAN OR ALASKAN NATIVE	ASIAN OR PACIFIC ISLANDER	HISPANIC	Not of Hispanic Origin		TOTAL	Total MALE	Total FEMALE
				BLACK	WHITE			
a. Pupils in Membership								
b.(1) Pupils in Need of Language Assistance Programs								
b.(2) Pupils Enrolled in Language Assistance Programs								
c. Pupils in Programs for the Gifted or Talented								
d. Pupils Who Received Corporal Punishment								
e. Pupils Suspended								

6. PUPIL ASSIGNMENT Consult the instruction sheet for instructions. This table is to be completed for all elementary entry- and exit-level classrooms in schools that offer any two of the grades one through six, inclusive. Kindergarten is NOT to be included. Complete the table for *classrooms* in the lowest grade and in the highest grade of those to be counted (grades three and six if this school offers grades three through eight).

If two grades are combined in one classroom, count only those students in the entry- or exit-level class. Place the number of students in each racial/ethnic category in the proper column. For each reported classroom, enter "zero" as appropriate. Do not leave any of the racial/ethnic category columns blank.

For additional classes, duplicate chart on separate paper and continue. Be sure to make three carbon (or other) copies of extra pages and attach to the returned forms as appropriate.

	1	2	3	4	5	6	7
	Teacher's Initials or ID Number	Grade	AMERICAN INDIAN OR ALASKAN NATIVE	ASIAN OR PACIFIC ISLANDER	HISPANIC	Not of Hispanic Origin	
						BLACK	WHITE
a							
b							
c							
d							
e							
f							
g							
h							
i							
j							

- If there are more than ten classes, check here ☐ and attach completed chart(s).

Form ED102

ORIGINAL—Return to Office for Civil Rights (LEGAL)

SPACE FOR LABEL

SCHOOL SYSTEM _____

SCHOOL NAME _____

SECTION II-TO BE COMPLETED BY ALL SCHOOLS OFFERING ANY SPECIAL EDUCATION PROGRAM

7. SPECIAL EDUCATION PROGRAMS If this school offers any special education programs, the table below must be completed. If no special education programs are offered, check this box ☐ and proceed to Section III. The instruction sheet of this form (General Instructions) defines the handicapping conditions and provides instructions for this question.

Special Education Programs	1	2	3	4	5	6	7	8	9	10	11
	PUPILS PARTICIPATING IN SPECIAL EDUCATION										
	Total	BY RACIAL/ETHNIC CATEGORY					BY SEX				
		American Indian or Alaskan Native	Asian or Pacific Islander	Hispanic	Not of Hispanic Origin		Total Male	Total Female	Limited or Non-English Speaking	PART TIME	FULL TIME
					Black	White					
(a) Educable Mentally Retarded											
(b) Trainable Mentally Retarded											
(c) Hard of Hearing											
(d) Deaf											
(e) Speech Impaired											
(f) Visually Handicapped											
(g) Seriously Emotionally Disturbed											
(h) Orthopedically Impaired											
(i) Other Health Impaired											
(j) Specific Learning Disability											
(k) Deaf-Blind											
(l) Multihandicapped											
(m) Total of lines (a) through (l)											

SECTION III—TO BE COMPLETED BY SCHOOLS OFFERING ANY GRADE 7-12

- This section need not be completed by schools whose highest grade offered is 6 or below.
- If this school is totally or partially ungraded, this section should be completed if any secondary-level courses are offered.

8. SELECTED COURSE ENROLLMENT Please read the instructions on the instruction sheet of this form. Enter number of pupils in appropriate boxes.

	Number of Pupils Enrolled in				Total Enrollment
	All-Male Classes	All-Female Classes	Mixed Classes		
			Male	Female	
a Home Economics Courses—Grades 7 through 9					
b Industrial Arts Courses—Grades 7 through 9					
c Physical Education Courses—Grades 7 through 9					

9. HIGH SCHOOL GRADUATES Refer to the instructions on the instruction sheet of this form.

Columns 1 through 5 must equal column 6

Columns 7 and 8 must equal column 6

	1	2	3	4	5	6	7	8
	AMERICAN INDIAN OR ALASKAN NATIVE	ASIAN OR PACIFIC ISLANDER	HISPANIC	Not of Hispanic Origin		TOTAL	Total MALE	Total FEMALE
				BLACK	WHITE			
Persons Receiving High School Diplomas								

Please check the accuracy and completeness of each item reported. Errors or omissions may require a refiling of this form.

CERTIFICATION I certify that the information given above is true and correct to the best of my knowledge and belief. (A willfully false statement is punishable by law [U.S. Code, Title 18, Section 1001].)

Signature of Principal or Authorized Agent _____ Title _____ (Area Code) Telephone Number _____ Date Signed _____

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ORIGINAL—Return to Office for Civil Rights (LEGAL)

– Other health impaired – limited strength, vitality, or alertness, due to chronic or acute health problems such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophelia, epilepsy, lead poisoning, leukemia, autism, or diabetes, which adversely affects a child's educational performance

– Specific learning disability – a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations. The term includes such conditions as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include children who have learning problems which are primarily the result of visual, hearing, or motor handicaps, of mental retardation, or of environmental, cultural or economic disadvantage

– Deaf-blind – concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that they cannot be accommodated in special education programs solely for deaf or blind children

– Multihandicapped – concomitant impairments, such as mentally retarded-blind, mentally retarded-orthopedically impaired, etc.), the combination of which causes such severe educational problems that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blind children. For the purposes of this report, this category should include those pupils who are severely or profoundly mentally retarded.

SPECIAL EDUCATION PROGRAMS. Special education programs are those designed to meet the needs of children with one or more of the handicapping conditions above.

INSTRUCTIONS FOR QUESTIONS ON ED102

Questions 1 through 3. Self-explanatory.

Question 4. GRADES OFFERED. In the boxes provided, check all grades offered in this school. Please note: The second box is to be checked by schools that offer only special education classes.

Question 5. PUPIL STATISTICS. Complete the chart for racial and ethnic categories and, where indicated, for males and females. Refer to the definitions above of racial and ethnic categories. Leave no blanks; where the answer is none, enter "0."

a. *Pupils in Membership.* The total number of pupils in membership on or about October 1, 1988 for each racial and ethnic category and for males and females in each box report total membership – not percentages, average daily attendance, average daily membership, or year-end enrollment. Count each [illegible], including any who attend less than a full day, such as kindergarteners.

b. *Pupils in Need of Language Assistance Programs.* Enter in b(1) the number of national origin [illegible] identified in their English proficiency [illegible] they cannot effectively or equally participate in the school's regular instruction program. Enter in b(2) [illegible] reported in b(1) in a program of language assistance (i.e., English-as-a-Second-Language, High Intensity Language Training, or a bilingual education program). Do not count pupils enrolled in a class to learn a language other than English.

c. *Pupils in Programs for the Gifted or Talented.* The number of pupils enrolled in programs for the gifted or talented. *Count pupils once regardless of the number of programs in which they are enrolled.*

d. *Pupils Who Received Corporal Punishment.* The number of pupils who received corporal punishment during the 1987-88 school year. Corporal punishment is the infliction of physical punishment to the body of a student by a school employee for disciplinary reasons. *Count pupils once regardless of the number of times they were punished.*

e. *Pupils Suspended.* The number of pupils who were suspended from this school for at least one day during the 1987-88 school year. Suspension is the temporary exclusion of a student from school for disciplinary reasons for one full school day or longer. *Count pupils once regardless of the number of times they were suspended.*

Question 6. PUPIL ASSIGNMENT. This question is to be completed by all schools that offer any two elementary grades between and including one through six. Select the lowest of those grades that your school offers and the highest. Do not include kindergarten. For example, if your school offers K-12, select grades one and six for the chart. If your school offers 1-5, select grades one and five.

Question 7. SPECIAL EDUCATION PROGRAMS. Please read the definitions of the handicapping conditions on the first page of this instruction sheet. Do not complete darkened areas.

- Count pupils participating in special education programs operated at this school only. Include those pupils who receive special education services in their regular classrooms as well as those who receive such services in special classrooms.
- If any child participates in two or more programs, include him or her in the one program in which he or she spends the most time. Example: John Doe spends 10 hours per week in a program for the educable mentally retarded and 6 hours per week in a program for the orthopedically impaired; he would be reported in line (a) for the educable mentally retarded, since he spends most of his time in that program.
- *In column 1*, enter in each row the total number of pupils participating in each program, for rows a through i. In row m, enter the total of rows a through i.
- *In column 2 through 6*, enter the number of pupils in each racial/ethnic category in rows a, b, e, g, and i (racial/ethnic data is not needed for the other rows). For each row in which data must be entered, the entries in columns 2 through 6 must sum to the entry in column 1.
- *In columns 7 and 8*, enter the number of male and female pupils in the special education programs defined in rows a, b, e, g, and i. For each of these programs, the sum of columns 7 and 8 must equal the entry in column 1.
- *In column 9*, enter for the programs defined in rows a, b, e, g, and i, the number of pupils who have also been identified in item 5b(1) as limited in English proficiency. Any such pupils will already have been counted in columns 2 through 8.
- *In columns 10 and 11*, enter the number of students who spend only a portion of the day in special education in column 10 and those who spend a full school day in special education in column 11. The sum of columns 10 and 11, for each row, must equal the total in column 1.

Question 8. SELECTED COURSE ENROLLMENT. Complete the chart for pupils enrolled in all-male classes, all-female classes, and for males and females in mixed classes in (a) home economics, (b) industrial arts, and (c) physical education.

- Enter the number enrolled in grades 7 through 12. For example, if this school serves grades 6-7-8, include only those pupils in grades 7 and 8. In (a), include occupational home economics.

Question 9. HIGH SCHOOL GRADUATES. Complete the chart for those who received a regular high school diploma during the 1987-88 school year. A high school diploma, for purposes of this question, is a diploma granted upon the successful completion of a prescribed secondary program of studies. This includes, where required as a prerequisite, the successful completion of a minimum competency test.

- This question is not to be answered by elementary schools, middle schools, or junior high schools.
- Do not include those who received other than a high school diploma, such as those who received a special diploma, a certificate of attendance, or a certificate of completion.

Please check the completeness and accuracy of each item reported. Errors or omissions may require a refiling of this form.

Federal Regulations for Section 504: Subpart D -- Preschool, Elementary, and Secondary Education

Subpart D applies to preschool, elementary, secondary, and adult education programs and activities that receive or benefit from federal financial assistance and to recipients that operate, or that receive or benefit from federal financial assistance for the operation of such programs or activities.

Section 104.32 Location and notification

A recipient that operates a public elementary or secondary education program shall annually:

(a) undertake to identify and locate every qualified handicapped person residing in the recipient's jurisdiction who is not receiving a public education; and

(b) take appropriate steps to notify handicapped persons and their parents or guardians of the recipient's duty under this subpart.

Section 104.33 Free appropriate public education

(a) **General.** A recipient that operates a public elementary or secondary education program shall provide a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap.

(b) **Appropriate education.** (1) For the purpose of this subpart, the provision of an appropriate education is the provision of regular or special education and related aids and services that: (i) are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met and (ii) are based upon adherence to procedures that satisfy the requirements of Sections 104.34, 104.35, and 104.36.

(2) Implementation of an individualized education program developed in accordance with the Education of the Handicapped Act is one means of meeting the standard established in paragraph (b)(1)(i) of this section.

(3) A recipient may place a handicapped person in or refer such person to a program other than the one that it operates as it means of carrying out the requirements of this subpart. If so, the recipient remains responsible for ensuring that the requirements of this subpart are met with respect to any handicapped person so placed or referred.

(c) **Free education.** (1) General. For the purpose of this section, the provision of a free education is the provision of educational and related services without cost to the handicapped person or to his or her parents or guardian, except for those fees that are imposed on nonhandicapped persons or their parents or guardian. It may consist either of the provision of free services or, if a recipient places a handicapped person in or refers such person to a program not operated by the recipient as its means of carrying out the requirements of this subpart, of payment for the costs of the program. Funds available from any public or private agency may be used to meet the requirements of this subpart. Nothing in this section shall be construed to relieve an insurer or similar third party from an otherwise valid obligation to provide or pay for services provided to a handicapped person.

(2) **Transportation.** If a recipient places a handicapped person in or refers such person to a program not operated by the recipient as its means of carrying out the requirements of this subpart, the recipient shall ensure that adequate transportation to and from the program is provided at no greater cost than would be incurred by the person or his or her parents (a guardian if the person were placed in the program operated by the recipient).

(3) **Residential placement.** If placement in a public or private residential program is necessary to provide a free appropriate public education to a handicapped person because of his or her handicap, the program, including non-medical care and room and board, shall be provided at no cost to the person or his or her parents or guardian.

(4) **Placement of handicapped persons by parents.** If a recipient has made available, in conformance with the requirements of this section and Section 104.34, a free appropriate public education to a handicapped person and the person's parents or guardian choose to place the person in a private school, the recipient is not required to pay for the person's education in the private school. Disagreements between a parent or guardian and a recipient regarding whether the recipient has made such a program available or otherwise regarding the question of financial responsibility are subject to the due process procedures of Section 104.36.

(d) **Compliance.** A recipient may not exclude any qualified handicapped person from a public elementary or secondary education after the effective date of this part. A recipient that is not, on the effective date of this regulation, in full compliance with the other requirements of the preceding paragraphs of this section shall meet such requirements at the earliest practicable time and in no event later than September 1, 1978.

Section 104.34 Educational setting

(a) **Academic setting.** A recipient to which this subpart applies shall educate, or shall provide for the education of, each qualified handicapped person in its jurisdiction with persons who are not handicapped to the maximum extent appropriate to the needs of the handicapped person. A recipient shall place a handicapped person in the regular educational environment operated by the recipient unless it is demonstrated by the recipient that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. Whenever a recipient places a person in a setting other than the regular educational environment pursuant to this paragraph, it shall take into account the proximity of the alternate setting to the person's home.

(b) **Nonacademic settings.** In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in Section 104.37(a)(2), a recipient shall ensure that handicapped persons participate with nonhandicapped persons in such activities and services to the maximum extent appropriate to the needs of the handicapped person in question.

(c) **Comparable facilities.** If a recipient, in compliance with paragraph (a) of this section, operates a facility that is identifiable as being for handicapped persons, the recipient shall ensure that the facility and the services and activities provided therein are comparable to the other facilities, services, and activities of the recipient.

Section 104.35 Evaluation and placement

(a) **Preplacement evaluation.** A recipient that operates a public elementary or secondary education program shall conduct an evaluation in accordance with the requirements of paragraph (b) of this section of any person who, because of handicap, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in a regular or special education program and any subsequent significant change in placement.

(b) **Evaluation procedures.** A recipient to which this subpart applies shall establish standards and procedures for the evaluation and placement of persons who, because of handicap, need or are believed to need special education or related services which ensure that:

(1) Tests and other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by their producer;

(2) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and

(3) Tests are selected and administered so as best to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

(c) **Placement procedures.** In interpreting evaluation data and in making placement decisions, a recipient shall (1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior, (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered, (3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and (4) ensure that the placement decision is made in conformity with Section 104.34.

(d) **Reevaluation.** A recipient to which this section applies shall establish paragraph (b) of this section, for periodic reevaluation of students who have been provided special education and related services. A reevaluation procedure consistent with the Education for the Handicapped Act is one means of meeting this requirement.

Section 104.36 Procedural safeguards

A recipient that operates a public elementary or secondary education program shall establish and implement, with to actions regarding the identification, evaluation, or educational placement of persons who, because of handi-

cap, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure. Compliance with the procedural safeguards of section 615 of the Education of the Handicapped Act is one means of meeting this requirement.

Section 104.37 Nonacademic services.

(a) **General.** (1) A recipient to which this subpart applies shall provide nonacademic and extracurricular services and activities in such a manner as is necessary to afford handicapped students an equal opportunity for participation in such services and activities.

(2) Nonacademic and extracurricular services and activities may include counseling services, physical recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the recipients, referrals to agencies which provide assistance to handicapped persons, and employment of students, including both employment by the recipient and assistance in making available outside employment.

(b) **Counseling services.** A recipient to which this subpart applies that provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap. The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives that are nonhandicapped students with similar interests and abilities.

(c) **Physical education and athletics.** (1) In providing physical education courses and athletics and similar programs and activities to any of its students, a recipient to which this subpart applies may not discriminate on the basis of handicap. A recipient that offers physical education courses or that operates or supports interscholastic, club, or intramural athletics shall provide to qualified handicapped students and equal opportunity for participation in these activities.

(2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different from those offered to nonhandicapped students only if separation or differentiation is consistent with the requirements of Section 104.34 and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

Section 104.38 Preschool and adult education programs

A recipient to which this subpart applies that operates a preschool education or day care program or activity or an adult education program or activity may not, on the basis of handicap, exclude qualified handicapped persons from the program or activity and shall take into account the needs of such persons in determining the aid, benefits, or services to be provided under the program or activity.

Section 104.39 Private education programs

(a) A recipient that operates a private elementary or secondary education program may not, on the basis of handicap, exclude a qualified handicapped person from such program if the person can, with minor adjustments, be provided an appropriate education, as defined in Section 104.33(b)(1), with the recipient's program.

(b) A recipient to which this section applies may not charge more for the provision of an appropriate education to handicapped persons than to nonhandicapped persons except to the extent that any additional charge is justified by a substantial increase in cost to the recipient.

(c) A recipient to which this section applies that operates special education programs shall operate such programs in accordance with the provisions of Sections 104.35 and 104.36. Each recipient to which this section applies is subject to the provisions of Sections 104.34, 104.37, and 104.38.

Section 104.40 [Reserved]

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